



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/148300

PRELIMINARY RECITALS

Pursuant to a petition filed March 27, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on April 23, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits to the Petitioner in the amount of \$2,751 for the period of May 1, 2012 to March 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Sue Rhode

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On April 30, 2012, the Petitioner submitted an ACCESS application for FS. In the application, she reported that she receives money from her parents of \$1700/month. In an interview, she indicated that she receives \$1700 – 2000/month from her parents. This was verified with a letter

from the Petitioner's mother. She also reported that she has health care coverage with a premium of \$930/month. The remainder of the money she receives was designated to be used for miscellaneous living expenses. Based on this information, the agency budgeted unearned income of \$920/month effective May 1, 2012 and determined the Petitioner's FS allotment as \$311/month.

3. On September 4, 2012, the Petitioner submitted a Six Month Review Form (SMRF). She reported that she receives \$920/month from her parents. She reported no other changes.
4. Effective October 1, 2012, the agency budgeted \$920/month in unearned income and a FS allotment of \$311/month.
5. On March 11, 2013, the agency conducted a six month review with the Petitioner. She again reported that she receives \$1700-2000/month from her parents and she pays a private health insurance premium of \$930/month from that income. The remainder of money was reported to be used for Petitioner's living expenses.
6. On March 21, 2013, the agency issued a Notification of FS Overissuance and worksheets to the Petitioner seeking to recover \$2,751 in FS benefits during the period of May 1, 2012 – March 30, 2013.
7. On March 27, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

"Discovery" is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency erred in improperly budgeting the Petitioner's income effective May 1, 2012 when it failed to count all of the Petitioner's unearned income in determining the amount of FS benefits for the Petitioner's household. The agency became aware of the potential for an overpayment on or about March 11, 2013. The agency seeks to recover for the period of May 1, 2012 – March 31, 2013. This overpayment period is within the 12 months prior to discovery.

The Petitioner reported to the agency in April, 2012 that she received money in the amount of \$1,700-2000/month from her parents. The Petitioner's mother submitted a letter verifying this information. The Petitioner and her mother also reported that \$930/month of this money was designated specifically for the Petitioner to pay her private health insurance premium. The Petitioner's parents paid this money to the Petitioner who paid her insurance company. The agency worker did not count the \$930/month paid to the insurance company as household income when determining the Petitioner's FS allotment.

The FS Handbook generally addresses budgeting unearned income and requires that all unearned income must be counted in the month it is received unless the regulations specifically indicate that it must be disregarded. FoodShare Handbook (FSH) § 4.3.4.2.

The federal FS regulations define unearned income:

(b) Definition of income. Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section. . .

(2) Unearned income shall include, but not be limited to:

. . .

(vii) Other third-party payments. Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income.

See 7 CFR 273.9(b)(2)(vii).

The federal regulations contain specific exclusions from income as follows:

(c) Income exclusions. Only the following items shall be excluded from household income and no other income shall be excluded:

. . .

(5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider or the household indicates the amount is excessive.

See 7 CFR 273.9(c)(5).

It is not disputed that the Petitioner reported that her parents provided her with \$930/month for her health insurance premium. The agency worker excluded that income when budgeting the Petitioner's income to determine FS allotment. The Petitioner testified that, had the agency worker told her that her parents would need to pay the insurance company directly to exclude the income, she would have done so. The worker, however, indicated that it was acceptable for her parents to reimburse her or pay her so that she could pay the insurance company. When the Petitioner was told after issuance of the overpayment that her parents should pay the insurance company directly, they did so.

The Petitioner provided copies of checks to the insurance company. For May and June, 2012, the Petitioner paid the insurance company \$879.49/month. For July, 2012 – April, 2013, the Petitioner paid the insurance company \$893.38/month.

I am satisfied that the Petitioner's parents provided funds to her to reimburse her for or directly pay for her health insurance premiums. The Petitioner acted as a bypass between her parents and the insurance company. I am further satisfied that the Petitioner's parents would have paid that amount directly to the insurance agency if they had been properly advised to do so. The money the Petitioner received from her parents for her insurance was a benefit to the household. However, I note that the Petitioner had this private insurance in lieu of BadgerCare or other publicly funded health insurance for which she was likely eligible. Based on the totality of these circumstances, I conclude it is proper for the agency to exclude the insurance payment/reimbursement from the Petitioner's income in determining the Petitioner's FS allotment for May, 2012 – April, 2013 and in determining whether there was an overissuance of FS benefits. I note that the agency excluded \$930/month from the Petitioner's income in determining her FS allotment. The actual amount was \$879.49/month for April and May, 2012 and \$893.38/month for June, 2012 – April, 2013. Therefore, the agency must reconsider household income and proper FS allotment based on an income exclusion of \$879.49 for April and May, 2012 and \$893.38/month for June, 2012 – April, 2013. The agency can then determine if there was an overissuance and the amount of that overissuance.

CONCLUSIONS OF LAW

The agency should exclude the Petitioner's health insurance payments of \$897.49/month for April and May, 2012 and \$893.38/month for June, 2012 – April, 2013 from her income in determining whether there was an overissuance of FS benefits.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to revise the overissuance determination by excluding \$879.49 from Petitioner's income in April and May, 2012 and \$893.38/month for June, 2012 – April, 2013. The agency shall issue a revised Notification of FS Overissuance and worksheets to the Petitioner. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

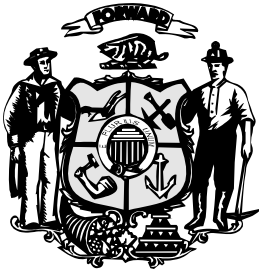
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of June, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 20, 2013.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability